IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1474 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MINOR JIVKAUR PRADHANSING BY PRADHANSING NARAYANSING - Appellant(s)
Versus
GENERAL MANAGER & 1 - Defendant(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR PF MAKWANA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Kheda passed in M.A.C.P. No.968 of 1986 dated 28.09.1988 whereby the Tribunal Partly allowed the said petition.

2.0 The brief facts of the case are that on 11.10.1984, when the appellant was coming to home, she was dashed by a truck owned by opponent

No.1. On account of the said accident, the appellant received serious bodily injuries, and hence, the appellant through her parent filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of the appellant before the Tribunal that since she has received injuries on account of the negligence and rashness on the part of the driver of the opponent No.1, she is entitled for compensation. The case of the appellant is supported by her father who vide his deposition(Exh.25) has stated that on the day of incident he was sitting outside his house and when her daughter was returning home after fetching water and at that time she stopped on the edge of the road, she was dashed by a truck owned by opponent No.1. The said fact also transpires from the police

complaint (Exh.17) filed by one Bhagwansingh and 'Panchnama' of the scene of offence wherein it has been stated that the dried stains of blood and wheel-mark of the truck were found on the edge of the road which clearly leads to the conclusion that the appellant was not standing in the middle of the road. The appellant has also produced, in support of her case, a copy of the judgment delivered by the Court in criminal case filed in connection with the said accident in which driver of the opponent No.1 pleaded guilty. Hence, the Tribunal was justified in coming to the conclusion that since the appellant had received injuries on account of the vehicle owned by opponent No.1., she is entitled for compensation and awarded an amount of Rs.53,300/- by way of compensation.

3.1 As regards the contention of the learned Advocate for the appellant that the Tribunal ought to have awarded some higher amount under the head of pain, shock and suffering is concerned, it would be relevant to refer to a

decision of this Court in the case of ***"Ashish Jivrajbhai Vs. Ashwinbhai Himatlal & Ors."*** reported in 1982 (2) GLR 290 wherein at para 22 and 23 it is held as under'

> "**22.** Now, in First Appeal No.822 of 1974 other three connected matters *(Ahmedabad Municipal Corporation V. Niranjan)*, 23(2) G.L.R. 180 we have recently awarded compensation in the sum of Rs.37,000/- under this head only for the loss of vision of the right-eye in the case of a young man aged about 21. even if, therefore, there was only the loss of vision without anything more, the appellant would have been entitled to an award at least in the like amount. In fact, **the appellant being much younger in age and the remained of his life being comparatively longer, and the pain and suffering and lost pleasures of life being to that extent more prolonged, the compensation would have been required to be made on somewhat higher scale.** Besides, the appellant has been left with a disfigured face on account of a bulging eye and a discoloured eye-ball and this additional factor would have pushed up compensation still further. The matter does not, however, rest merely at that, because the appellant has not only suffered loss of vision and disfigurement but also a permanent disability affecting the entire left side of his body. He is experiencing great difficulty in speech. His gait is not normal and he has to depend on somebody to help him in his daily routine. Chances of matrimony are also severely affected. The scale of pain and suffering and loss of amenities and

> enjoyment of life with all these disabilities and limitations would be much higher. Even if hemiplegia with 30% to 40% permanent disability were the only tragic consequence of the accident, a liberal award would have been required to made under this head. When in *Amul Rameshchandra Vs. Abbasbhai Kasambhai*, 19 G.L.R. 721, a sum of Rs.25,000/- was awarded under this head in the case of a yong boy aged 12 whose leg above the ankle had been amputated, a higher, if not a substantially higher, amount would have been required to be awarded for permanent malfunctioning of the entire half side of the body.
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> **23.** Bearing in mind all the circumstances of the case and taking an overall view of the scale of pain and suffering and loss of amenities and enjoyment of life resulting from multiple injuries, it appears to us that an award in the sum of Rs.55,000./- under this head would be just proper and adequate. For the disfigured and disjointed physical frame with which the appellant will have to learn to live for over half a century and for the pain, unsightliness, inconvenience and lost pleasures and amenities of life, an award in the aforesaid sum would be the just compensation."

3.2 In the case on hand also, the appellant is a minor girl, and therefore, taking into consideration the period for which she has to undergo pain, shock and suffering and in view of the principle laid down by this Court in the case of "***Ashish Jivrajbhai Vs. Ashwinbhai Himatlal &***

Ors." (Supra), the Tribunal appellant shall be entitled for Rs.37,000/- under the head of pain, shock and suffering. Since, the Tribunal has already awarded Rs.22,500/- under the said head, the appellant shall be entitled for an additional amount of Rs.(37,000 – 22,500)=14,500/- under the head of pain, shock and suffering,.

3.3 As regards the contention of the learned Advocate for the appellant that the Tribunal ought to have awarded some higher amount under the head of loss of future income, it would be relevant to refer to a full bench decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors."*** reported in 1996 (4) SCC 362 [1996 (3)GLR 136]. In that decision the Court reiterated the method of working out as to what would be a 'just' compensation.

3.4 Applying the principle laid down in the aforesaid decision, the Tribunal ought to have

assessed the monthly loss of income sustained by the appellant at Rs.180/-after deducting 35 per cent disability sustained by him. Therefore, yearly loss of income of the appellant shall come to Rs.[(180 X 12)=2160] and after applying a multiplier of 20 years his future loss of income would come to Rs.(2160 X 20) = 43,200/-. Since, the Tribunal has already awarded an amount of Rs.28,800/- under the head of loss of future income, the appellant shall be entitled to an additional amount of Rs.(43,200 – 28,800) = Rs. 14,400/- under the said head. It may be noted that the claim in this appeal is restricted to Rs.25,000/- only, and hence, the appellant shall be entitled for an additional amount of Rs.25,000/- by way of compensation.

4.0 In the result, the appeal is allowed. The appellant shall be entitled for an additional amount of Rs.25,000/- by way of compensation with interest at the rate of six per cent from the date of application before the Tribunal, till

realisation. The judgment and award of the Motor Accident Claims Tribunal(Main), Kheda passed in M.A.C.P. No.968 of 1986 dated 28.09.1988 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

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